

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BUILDING CODE APPEALS BOARD
DOCKET NO.: 10-954

Reit Management,
Appellant

v.

Town of Lexington,
Appellees

BOARD'S RULING ON APPEAL

Introduction

This matter came before the State Building Code Appeals Board ("Board") on appellant's appeal filed pursuant to G.L. c.143, §100 and 780 CMR 122.1. In accordance with 780 CMR 122.3 the appellant petitioned the Board to overturn a decision of the Town Building Official based on the Seventh Edition of the Massachusetts State Building Code ("Code"). For the following reasons, the appeal is hereby **GRANTED** and the Building Official's determination is **OVERTURNED**.

The appellant requested that the Board overturn a decision by the Town Building Official that the property was in violation of 780 CMR Section 414.2. Jon Eisenberg and Chris Lynch of Rolf Jensen & Associates testified on behalf of the appellant owner Reit Management. Garry Rhodes, Building Commissioner for the Town of Lexington and Lieutenant Kenneth J. Tremblay of the Lexington Fire Department testified on behalf of the appellee. All witnesses were duly sworn.

Procedural History

The Board convened a public hearing on December 2, 2010, in accordance with G.L.c. 30A, §§10 & 11; G.L.c. 143, §100; 801 CMR 1.02; and 780 CMR 122.3. All interested parties were provided with an opportunity to testify and present evidence to the Board.

Findings of Fact

The facts of this matter are largely not in dispute. Instead, this matter turns on the review of the applicable provisions of the State Building Code. The Board bases the following findings upon the testimony presented at the hearing. There is substantial evidence to support the following findings:

1. The property at issue is located at 4 Maguire Road, Lexington, MA.
2. The subject property was subdivided in 2006 into separate control areas for hazardous materials.
3. In 2006, the renovations were permitted under the 6th edition of the State Building Code and was of Type 2C construction.
4. The most recent permit is under the 7th edition of the Code and the construction is now classified as Type 2B.

5. In 2006 the control areas were divided into 4 areas, with one on the first floor and 2 others that were double height spanning the first and the second floor. The second floor was allowed to use 75 percent of the allotted materials.
6. The floor of the building is not fire rated.
7. There are 1 hour fire barriers built from the foundation to the floor and from the floor to the top of the second story.
8. Since the 1980's the building has been occupied sometimes by a single tenant and sometimes by multiple tenants.

Exhibits

The following Exhibits were entered into evidence at the hearing on this matter and reviewed by the Board:

Exhibit 1: Application for Appeal

Exhibit 2: Letters from Rolf Jensen & Associates (RJA) to the International Code Council (ICC) requesting an interpretation of the International Building Code provision relevant to this appeal, 3 pages.

Analysis

A. Jurisdiction of the Board

There is no question that the Board has jurisdiction to hear this case. The governing statute provides that:

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations, except any specialized codes as described in section ninety-six, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the appeals board. G.L. c.143, §100.

The issues giving rise to this matter directly implicate provisions of the Code. As such, this Board has jurisdiction to decide this case pursuant to G.L. c. 143, §100.

B. State Building Code requirements

The issue is whether the Building Official's ruling that the Building Code does not allow multiple story control areas was correct. The relevant provision of the regulations states, "Control areas shall be those spaces within a building where quantities of hazardous materials not exceeding the maximum quantities allowed by 780 CMR are stored, dispensed, used or handled." 780 CMR 414.2.

The appellant asserted that prior to this appeal there was a single tenant who has moved out. There are now 2 tenants ready to move in.

The appellant testified that it was their interpretation of the Code that multiple story control areas are allowed. The appellant asserted that they requested an interpretation from the

International Code Council (ICC) of the International Building Code which mirrors the Massachusetts Building Code relevant to this section based on the details of this particular structure and specifically in regards to the unrated floors.

The appellants stated that the new tenants are research and development organizations but are much smaller users of hazardous materials than the previous tenant. The appellant testified that the tenants have submitted applications to the fire department for low quantities that are well below the limit for these control areas. The appellant stated that the request was for approximately 150 gallons of Class 1 liquid on the first floor and a similar amount on the second floor. The appellant stated that the limit for a fully sprinkled building would be about 480 gallons.

The Town Building Official testified that he did not believe the Code allowed for a multiple story control area but that even if it does that it must be continuously protected by fire barriers and he does not believe the floor is protected, breaking up the control area.

The Town Fire Official also testified about his concerns of having multiple tenants that may not be in communication with each other in the same control area with possible conflicting materials and the difficulty of monitoring that. He also stated that he could not speak for the Fire Chief regarding permitting and licensing issues.

Because of the testimony and documentation presented, the appellant's determination that 780 CMR 414.2 allows for multiple story control areas is correct and the Building Official's statement to the contrary is overturned.

Conclusion

A motion was made by Jacob Nunnemacher and seconded by Ralph Cirelli to **Grant** the appeal and **Overturn** the decision of the Town Building Official, making an interpretation that the Code allows for multiple story control areas.

Jacob Nunnemacher

Jeffrey Putnam

Ralph Cirelli

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.

DATED: January 20, 2011